

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3616 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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RAM ENTERPRISES

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 3616 of 2001
MR CG SHARMA for Petitioner No. 1
MR MANISH R BHATT for Respondents
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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr MR Bhatt, learned counsel waives
service of notice for the respondents. In the facts and

circumstances of the case, the petition is taken up for final disposal.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the notice dated 10.4.2001 (Annexure 'E') issued by the Joint Commissioner of Income-tax (Asstt. Special Range 5), Ahmedabad under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), respondent No. 2 herein, stating that he has reason to believe that the petitioner's income chargeable to tax for the assessment year 1995-96 has escaped assessment within the meaning of Section 147 of the Act and that, therefore, he proposes to re-assess the petitioner's income for the said assessment year and the petitioner has been called upon to deliver a return in the prescribed form of the petitioner's income for the said assessment year. The reasons were not furnished to the petitioner along with the notice.

3. In response to the notice, affidavit in reply has been filed by Mr Suresh Singh Panwar, Joint Commissioner of Income-tax (Asstt. Spl. Range 5), Ahmedabad. At the hearing of this petition, the following reasons have been produced by the learned counsel for the revenue :-

"It is seen from the record that copy of Partnership Deed attached with return is certified only by one partner, hence as per provisions of section 185, the firm was required to be Assessed as AOP and remuneration of Rs.3,19,734/- paid to partner were required to be added to income. Hence, I have reason to believe that by adopting incorrect status of assessee has resulted into under assessment of income of

Rs.3,19,734 and consequential short levy of tax of Rs.2,19,978/- including interest of Rs.92,084/- u/s. 234-B.

(S.S. Panwar)
Jt. Commissioner of Income-tax
(Asstt.) Spl.Range-5, Ahmedabad"

4. The learned counsel for the revenue does not dispute the fact that the petitioner was registered as a partnership firm under the Income-tax Act and that it was only on account of the fact that the copy of the

partnership deed attached with the return was certified by only one partner; that in view of the provisions of Section 185, the firm was required to be assessed as an association of persons and, therefore, remuneration of Rs. 3 lacs and odd amount paid to the partners was required to be added to the income. The third respondent has stated that it was by adopting incorrect status of the assessee which has resulted into escapement of income.

Even as per the reasons given by the third respondent, it is clear that a copy of the partnership deed was produced with the return, but it was certified by only one partner. The relevant assessment year is 1995-96. The impugned notice was issued on 10.4.2001 meaning thereby beyond the period of four years. Such notice is sustainable only if, inter alia, the assessee had failed to disclose fully and truly all material facts necessary for the purpose of making the assessment for that assessment year. Neither in the reasons nor in the reply affidavit, it is the case of the respondents that the petitioner had failed to disclose fully and truly all materials facts necessary for the purpose of making assessment for that assessment year. Looking to the facts of the case, a copy of the partnership deed was produced but not signed by all the partners on all pages - it cannot be said that there was any failure on the part of the petitioner to disclose any material fact. In view of the decision of the Apex Court in Calcutta Discount Co. Ltd. vs. ITO, 41 ITR 191, this is a fit case for quashing the impugned notice (Annexure "E").

5. The petition is accordingly allowed. The notice dated 10.4.2001 (Annexure "E" issued by the Joint Commissioner of Income-tax (Asstt. Special Range 5), Ahmedabad under Section 148 of the Income-tax Act, 1961 is hereby quashed and set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-